No. 341

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

H. L. DILLON, JR., ET AL., *Petitioners*

v.

MICHEL T. HALBOUTY, ET AL., *Respondents*

On Petition For Writ Of Certiorari To The Supreme Court of Texas

MEMORANDUM BY CITY OF PORT ARTHUR, TEXAS, IN SUPPORT THEREOF AS AMICUS CURIAE

This memorandum is filed by the City of Port Arthur, Texas, a municipality and a political subdivision of the State of Texas, as amicus curiae, in support of the view that the Court should grant the Petition for Writ of Certorari filed by Petitioners, H. L. Dillon, Jr. et al. The Petition for Writ of Certiorari by H. L. Dillon, Jr.,

et al., now pending is from the Judgment of the Supreme Court of Texas invalidating the order by the Railroad Commission of Texas which reversed and rendered the Judgment of the trial court which had sustained the gas proration order of the Railroad Commission of Texas. It is the view of the City of Port Arthur, as amicus curiae, that said decision is invalid under the due process clause of the 14th Amendment of the United States Constitution and that the questions are substantial and will have a far reaching effect and warrant consideration by this Honorable Court:

1. The effect of the decision will be that some twenty-two (22) wells drilled on small tracts in the Port Acres Field (several of which are drilled on tracts owned by our negro residents) will have their allowables cut so low that they will not be able to be operated at a profit and will be shut down and taken off the tax rolls. Said wells are located within the City Limits of the City of Port Arthur, your Amicus Curiae, and will mean a loss of ad valorem taxes to the City of Port Arthur, your Amicus Curiae, of over $30,000.00 per year. The City of Port Arthur has a population of 70,000 and this will cause not only a great hardship to the Petitioners and the royalty owners, who stand to have confiscated their investments running into millions of dollars, but to the City of Port Arthur, Texas. This loss of revenue to the City of Port Arthur will be a very serious loss economically.

2. The dissenting opinion of Justice Clyde Smith of the Supreme Court of Texas clearly points out that the majority opinion of the Supreme Court of Texas deprived the Petitioners of their property rights, because there was an indication in the record by bill of exception that they

were offered unitization and because of their refusal of the offer, they drilled the wells at their own risk. (See Dissenting Opinion of Clyde Smith, Appendix "B" to the Petition for Writ of Certiorari, Page 53). The failure of the Court to remand for new trial on the question of offers to pool is contrary to the decisions of the Supreme Court of the United States and deprived the Petitioners of a fair hearing on the paramount question of unitization.

3. The opinion of the majority attempts to do by indirection that which the Legislature has not seen fit to authorize; that is, it authorizes compulsory pooling by indirection. This is shown by the minority opinion of Justice Clyde Smith which clearly stated this as follows:

> "The right of separate development of small tracts, where the owners did not voluntarily pool with other tracts, has never been questioned in former decisions. Even though the Legislature in Article 6014, Vernon's Annotated Civil Statutes, gave the Railroad Commission broad authority to enact orders to prevent waste, the Legislature was very careful in paragraph (g) of this statute to expressly declare that it was not the intention of the Legislature to require repressuring of an oil pool or that the separately owned properties in any pool be unitized under one management, control or ownership. . . .
>
> "My contention is simply this: The statutes now in effect do not compel unitization. Therefore, the Railroad Commission has no legal authority to enter orders which would have the effect of requiring or compelling unitization." (See Appendix "B" to Petition for Writ of Certiorari, Pages 56-57).

As is pointed out in the minority opinion of Justice Smith, Appendix "B" to the Petition for Writ of Certio-

rari, Pages 53-54, there are no standards or guides that the Railroad Commission will have available to them in carrying out the decision of the Supreme Court, and the Petitioners and every other small tract owner in the State of Texas are subject to having their property rights confiscated or severely restricted on a regulation or court decision that is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, which is contrary to the principle of *Connally v. General Construction Co.*, 269 U.S. 385, 391. This will destroy competition in the production of gas by the small tract owners in the State of Texas and will, therefore, restrict the production and sale of gas throughout the State.

4. The decision of the Supreme Court of Texas is an unusual and novel decision in that it has reversed and failed to follow an unbroken line of decisions and has held contrary to previous decisions affirmed by this Court in *Railroad Commission v. Rowan & Nichols Oil Co.*, 310 U.S. 573; *Railroad Commission v. Rowan & Nichols Oil Co.*, 311 U.S. 578; *Railroad Commission v. Humble Oil & Refining Co.*, 193 S.W. 2d 824 (Tex. Civ. App., writ refused, no reversible error), affirmed in *Humble Oil & Refining Co. v. Railroad Commission* and *Williams v. Railroad Commission*, 331 U.S. 791; as well as previous decisions by the Texas Supreme Court, which held that the Railroad Commission was justified in assigning a much larger portion of the allowable production on a per well basis than the acreage would entitle the well to. The dissenting opinion points this out as follows:

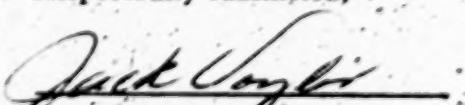
> "I respectfully dissent. Upon further consideration, I find that to agree with the majority would place me in a completely inconsistent position with that of for-

mer decisions of this Court, especially those wherein I was the author of the majority opinion. This is especially true when considered in the light of the decisions in Ryan Consolidated Petroleum Corporation v. Pickens, 155 Tex. 221, 285 S.W. 2d 201, and other cases discussed herein." (See Appendix "B" to the Petition for Writ of Certiorari, P. 49).

As a result the Federal questions, and the violation thereof by the decisions of the Texas Supreme Court, set out in the Petition for Writ of Certiorari are raised and brought before this Court for the first time.

The questions raised in the Petition for Writ of Certiorari by the Petitioners are substantial and warrant a full review by this Honorable Court because of the violation of the Petitioners' federal rights and because of the far reaching operational effect of said decision in the oil and gas industry and upon the tax structure of this Amicus Curiae, the City of Port Arthur, Texas, and others similarly situated.

Respectfully submitted,



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I, Jack Voyles, Attorney for the Amicus Curiae, City of Port Arthur, Texas, depose and say that I have served copies of the foregoing Amicus Curiae Brief of the City

of Port Arthur, Texas, on behalf of the Petition for Writ of Certiorari, by mailing the same by United States Mail, Certified Mail, Return Receipt Requested to the following counsel of record in said cause:

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SUBSCRIBED AND SWORN to before me, on this the 9th day of October, A. D. 1962.

Mrs. Durelle Chapin

Notary Public in and for
Jefferson County, Texas
MRS. DURELLE CHAPIN